

## **N.D.A.G. Letter to O'Connell (May 16, 1990)**

May 16, 1990

Senator David O'Connell  
District 6  
Route 1, Box 78  
Lansford, ND 58750

Dear Senator O'Connell:

Thank you for your letter of March 8, 1990, regarding the disbursement of state tuition apportionment payments to the Minot Public School District and the Grand Forks Public School District.

Based on your telephone conversation of May 2, 1990, with a member of my staff it appears that you are concerned about two major issues. Your first concern is whether the Superintendent of Public Instruction (hereinafter Superintendent) acted legally in disbursing tuition apportionment payments (which are based on the number of students residing in the school district) to the Minot Public School District for those students residing on the Minot Air Force Base (which appears to be located within the Glenburn Public School District) and being educated by the Minot Public School District. Your second concern regards what can be done if the Superintendent acted illegally in disbursing these tuition apportionment payments.

The first concern also arose in the case of the disbursement of tuition apportionment payments to the Grand Forks Public School District for certain students who appeared to be residing in the Emerado Public School District but were being educated by the Grand Forks Public School District. The factual circumstances of the Minot/Glenburn situation are very similar to those regarding the Grand Forks/Emerado situation and each involves the same legal issues.

To provide some background, tuition apportionment payments made to school districts result from the state tuition fund. The state tuition fund consists of the net proceeds arising from fines for violations of state laws, income from leasing of school lands, and the interest and income from the state permanent school fund. N.D.C.C. § 15-44-01. The county treasurer receives income and forwards a statement to the Office of Management and Budget (OMB). OMB certifies to the Superintendent the amount in the fund.

The Superintendent then apportions the fund among the state's school districts "in proportion to the number of children of school age residing in each as shown by the last enumeration provided for by law." N.D.C.C. § 15-44-03. Thus, the money is apportioned based on residence status and not on which district is actually providing the education.

OMB then pays each district the amount that it is due. This amount is a percentage based on that district's enumeration (census) as compared to the total school census.

The school census is the responsibility of each school district. N.D.C.C. § 15-47-13. It is comprised of all children under 18 years of age who have their legal residence in the district. The school board approves the census and delivers it to the county superintendent who then sends the census to the Superintendent. N.D.C.C. § 15-47-13.

The Superintendent's duty under N.D.C.C. § 15-44-03 is ministerial; i.e., he or she takes the official census and computes a percentage compared to the total state census and multiplies that times the funds available. If the Glenburn Public School District did not certify certain students as part of its census, the Superintendent had no authority to give the Glenburn Public School District tuition apportionment payments for those students. If this happened in the past, it does not appear that there is any remedy at this point. The state tuition fund is "zero balanced" each year and no funds are available to make a retroactive payment. The correct action for the Glenburn Public School District would have been to include the students in its census, and if the district was not paid for the students, to bring a mandamus and declaratory judgment action in court to determine its appropriate percentage of the total fund.

I hope the enclosed information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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